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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,016	08/20/2001	David Scott Gray	PGRACT	7568
7590 01/12/2005			EXAMINER	
Thompson E. Fehr Goldenwest Corporate Center Suite 300 5025 Adams Avenue Ogden, UT 84403			PATEL, MITAL B	
			ART UNIT	PAPER NUMBER
			3743	
DATE MAILED: 01/12/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/934,016

Applicant(s)

GRAY, DAVID SCOTT

Examiner

Mital B. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-6 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-6, 8-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment/Arguments*

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
2. Applicant's arguments, see Appeal Brief, filed 10/29/04, with respect to the rejection(s) of claim(s) 3-6, 8-11 under 35 U.S.C. 102 and 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Schneider et al (US 5,333,606) in view of Coates et al (US 5,996,579).

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 9 is rejected under 35 U.S.C. 102(e) as being anticipated by Coates et al (US 5,996,579).
5. **As to claim 9**, Coates et al teaches a medical port **10** for an emergency safety resuscitator having a collapsible bag **22** with an outlet, which comprises: a tube having

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a first aperture **28** for communicating with a collapsible bag of a resuscitator, a second aperture **12**, a third aperture **14** available for connection to a mask or an endotracheal tube, and an inside; and a siliconized (Please note that Coates et al teaches the self-sealing membrane to be made of rubber and as such the Examiner considers the recitation to read on siliconized as it is well known that rubber can come in the form of siliconized rubber) self-sealing membrane **34** (**See Col. 6, lines 29-35**) releasably covering the second aperture of said tube.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 3 and 6 rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider et al (US 5,333,606) in view of Coates et al (US 5,996,579).

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9. **As to claim 3**, Schneider et al teaches a medical port **10** for an emergency safety resuscitator having a collapsible bag with an outlet, which comprises: a tube having a first aperture **13,14** for communicating with a collapsible bag of a resuscitator, a second aperture **15**, a third aperture **12** available for connection to a mask or an endotracheal tube, and an inside; and two or more strips **at 19,20** of flexible plastic (**See Col. 5, lines 22-23 which discloses valve 16 comprising elements 19,20 to be made of a resilient material, which material the Examiner considers to broadly read on plastic as plastic can exhibit resilient properties**) each strip having a first end attached to the inside of the tube, between the first aperture and the second aperture, and a second end pushing against a second end of at least one other of said strips. Should Applicant contend the recitation of resilient material does not read on plastic, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the strips of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Schneider et al teaches essentially all of the limitations except for a self-sealing membrane releasably covering the second aperture of said tube. Coates et al teaches a medical port having a tube that includes a self-sealing membrane **34** releasably covering an aperture to provide an air tight seal before and after the introduction of medicament via a syringe/needle. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a releasable self-sealing membrane to the second aperture of Schneider et al so that there is an air-tight seal

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before and after the introduction of medicament via syringe/needle. Furthermore, such a sealing membrane would prevent debris from collecting into the aperture while not in use with the suction catheter.

10. **As to claim 6**, the above combination teaches a medical port wherein the self-sealing membrane is siliconized. Please note that Coates et al teaches the self-sealing membrane to be made of rubber and as such the Examiner considers the recitation to read on siliconized as it is well known that rubber can come in the form of siliconized rubber.

11. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider et al/Coates et al as applied to claim 3 above, and further in view of Wilson (US 4,106,502).

12. **As to claim 4**, the above combination of Schneider et al/Coates et al teaches essentially all of the limitations except for wherein the tube is constructed of clear plastic. However, Wilson does teach the use of a clear plastic for the construction of tube so that the tube is lightweight and allows for internal viewing or visibility.

Therefore, it would have been obvious to one of ordinary skill in the art to modify the tube of Schneider et al and construct the tube of a clear plastic so that the tube is lightweight and allows for internal viewing or visibility.

13. **As to claim 5**, the above combination teaches a medical port wherein the self-sealing membrane is siliconized. Please note that Coates et al teaches the self-sealing membrane to be made of rubber and as such the Examiner considers the recitation to

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read on siliconized as it is well known that rubber can come in the form of siliconized rubber.

14. Claim 8 rejected under 35 U.S.C. 103(a) as being unpatentable Coates et al (US 5,996,579) in view of Wilson (US 4,106,502).

15. **As to claim 8**, Coates et al teaches a medical port **10** for an emergency safety resuscitator having a collapsible bag **22** with an outlet, which comprises: a tube having a first aperture **28** for communicating with a collapsible bag of a resuscitator, a second aperture **12**, a third aperture **14** available for connection to a mask or an endotracheal tube, and an inside; and a siliconized (Please note that Coates et al teaches the self-sealing membrane to be made of rubber and as such the Examiner considers the recitation to read on siliconized as it is well known that rubber can come in the form of siliconized rubber) self-sealing membrane **34** (**See Col. 6, lines 29-35**) releasably covering the second aperture of said tube. Coates et al teaches essentially all of the limitations except for wherein the tube is constructed of clear plastic. However, Wilson does teach the use of a clear plastic for the construction of tube so that the tube is lightweight and allows for internal viewing or visibility. Therefore, it would have been obvious to one of ordinary skill in the art to modify the tube of Schneider et al and construct the tube of a clear plastic so that the tube is lightweight and allows for internal viewing or visibility.

16. Claim 10 is rejected under 35 U.S.C. 102(b) as anticipated by Schneider et al (US 5,333,606) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schneider et al (US 5,333,606).

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17. **As to claim 10**, Schneider et al teaches a medical port **10** for an emergency safety resuscitator having a collapsible bag with an outlet, which comprises: a tube having a first aperture **13,14** for communicating with a collapsible bag of a resuscitator, a second aperture **15**, a third aperture **12** available for connection to a mask or an endotracheal tube, and an inside; and two or more strips **at 19,20** of flexible plastic (**See Col. 5, lines 22-23 which discloses valve 16 comprising elements 19,20 to be made of a resilient material, which material the Examiner considers to broadly read on plastic as plastic can exhibit resilient properties**) each strip having a first end attached to the inside of the tube, between the first aperture and the second aperture, and a second end pushing against a second end of at least one other of said strips. Should Applicant contend the recitation of resilient material does not read on plastic, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the strips of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

18. Claim 11 rejected under 35 U.S.C. 103(a) as being unpatentable Schneider et al (US 5,333,606) in view of Wilson (US 4,106,502).

19. **As to claim 11**, Schneider et al teaches essentially all of the limitations except for wherein the tube is constructed of clear plastic. However, Wilson does teach the use of a clear plastic for the construction of tube so that the tube is lightweight and allows for internal viewing or visibility. Therefore, it would have been obvious to one of



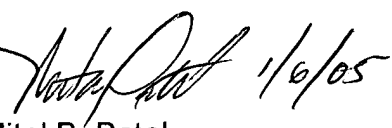
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ordinary skill in the art to modify the tube of Schneider et al and construct the tube of a clear plastic so that the tube is lightweight and allows for internal viewing or visibility.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 571-272-4802. The examiner can normally be reached on Monday-Friday (11:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 1/6/05  
Mital B. Patel  
Examiner  
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